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00-949 (00-A504)

THE SUPREME COURT OF THE UNITED STATES OF AMERICA

GEORGE W.BUSH and RICHARD CHENEY,
Applicants

v.

ALBERT GORE, JR., *et al.*,

EMERGENCY APPLICATION FOR STAY OF ENFORCEMENT OF THE JUDGEMENT BELOW PENDING THE FILING AND DISPOSITION OF A PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Motion to File a Brief as *Amicus Curiae* or in the Alternative Motion to Intervene for the Purpose of Allowing Cameras in the Courtroom and Brief as *Amicus Curiae* or as Intervenor

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Motion to File a Brief as *Amicus Curiae* or in the Alternative Motion to Intervene for the Purpose of Allowing Cameras in the Courtroom

COMES NOW Movant, Mary Ann Smania, a citizen of the United States, a resident of Lake County, Florida, and moves this Court for leave to file a brief as *amicus curiae* or in the alternative to intervene in the above referenced matter and in support thereof states as follows:

1. Movant is a degreed sociologist, and a resident of the state of Florida.

2. Movant has attempted to raise judicial awareness of the use of cameras in the courtroom at the District Court level.

3. Movant seeks to apprise this Court of facts and perspectives relevant to the determination of permitting the use of cameras in the courtroom, more particularly described in the arguments contained in the accompanying brief.

4. There is great public interest and purpose to be served in allowing the use of cameras in the courtroom in the above styled action.

5. The Court should grant this motion and consider the novel arguments raised in support of permitting cameras to be present at the oral arguments on Friday, December 1, 2000. This Court's decision to permit cameras in the courtroom on this historic occasion will have a significant beneficial impact on the American people's perception of and confidence in their judicial system.

6. As a result of the shortened time for filing of these documents, Movant has included her brief as *amicus curiae* as a practical necessity.

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THE COURT SHOULD ALLOW CAMERAS IN THE COURTROOM DURING ORAL ARGUMENTS IN THIS HISTORIC CASE.

The Constitution of the United States is carefully tailored to design a system of checks and balances for the Executive and Legislative Branches. No such counterbalance exists for the Supreme Court of the United States.

The Supreme Court is only guided by the broad limits set forth by the United States Constitution and the Court's inherent judicial power with no other oversight. The Supreme Court, however, indirectly supervises the promulgation of the rules and procedures for the United States District and Circuit Courts.

The District Courts of the United States promulgate their own rules and procedures under the authority of 28 U.S.C. § 2071(a) that provides in pertinent part:

> The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business.

U.S.C. § 2071 (a). These rules are reviewed, not by a separate branch of government, but rather through the judicial council of each circuit whose only members come from the judiciary itself.

> Each judicial council shall periodically review the rules which are prescribed under [28 U.S.C. § 2071] by district courts within its circuit for consistency with rules prescribed under [28 U.S.C. § 2072]. Each council may modify or abrogate any such rule found inconsistent in the course of such a review.

28 U.S.C. § 332(d)(4). The Judicial Council of the circuit is comprised of "the chief judge of the circuit, who shall preside, and an equal number of circuit judges and district judges of the circuit." 28 U.S.C. § 332(a)(1). The exact number of judges to sit on the council is determined "by majority vote of all such judges of the circuit in regular active service." Id.

The makers of the District Court rules are therefore the very same members who apply these rules in the courtroom. This provision does not lend itself to innovative thinking, nor does it tend to inspire changes in the law to match the

advancements outside the judicial system in both technology and changing social norms.

The Judicial Councils which make the rules for the district courts in each Circuit follow the form of their appellate level counterpart, the Judicial Conference of the United States. The Judicial Conference of the United States is established under 28 U.S.C. § 331.

> The Chief Justice of the United States shall summon annually the chief judge of each judicial circuit, the chief judge of the Court of International Trade, a district judge from each judicial circuit to a conference at such time and place in the United States as he may designate. He shall preside at such conference which shall be known as the Judicial Conference of the United States.
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> . . .
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> The Conference shall make a comprehensive survey of the condition of business in the courts of the United States and prepare plans for assignment of judges to or from circuits or districts where necessary. It shall also submit suggestions and recommendations to the various courts to promote uniformity of management procedures and the expeditious conduct of court business. The Conference is authorized to exercise the authority provided in [28 U.S.C. §

> 372(c)] as the Conference, or through a standing committee.
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> . . .
>
> The Conference shall also carry on a continuous study of the operation and effect of the general rules of practice and procedure now or hereafter in use as prescribed by the Supreme Court for the other courts of the United States pursuant to law. Such changes in and additions to those rules as the Conference may deem desirable to promote simplicity in procedure, fairness in administration, the just determination of litigation, and the elimination of unjustifiable expense and delay shall be recommended by the Conference from time to time to the Supreme Court for its consideration and adoption, modification or rejection, in accordance with law.
>
> . . .
>
> The Chief Justice shall submit to Congress an annual report of the proceedings of the Judicial Conference and its recommendations for legislation.

28 U.S.C. § 331.

The Judicial Conference suffers from the same in-breeding as the judicial councils. The Judicial Conference in effect, governs the Judicial Council and the District Court

systems, is exclusively comprised of appellate and district level judges, and is presided over by the Chief Justice of the United States Supreme Court. This system of self- governance establishes little or no inspiration or input for the Conference to adapt court procedures consistent with the technological and social standards governing the rest of American society, thus alienating the judicial system from the American people.

At the Supreme Court level, there is no governing body at all. The Supreme Court, acting in isolation and with little input from other sectors of American society, has carte blanche to establish rules and procedures for itself. Because the Court establishes the tone and setting for both the Judicial Conference and Judicial Councils, the natural effect of the Court's isolation from other sectors of American society is to negatively impact the rule making capacity of all the federal courts.

How can the federal courts avoid this isolationism and enhance the confidence of the American people in their judicial system? One method would be to re-examine the current

judicial policy of prohibiting video and still cameras in the courtroom. This prohibition is illustrative of one such critical area where the self-governance of the Judicial Branch acts to protect and isolate the court system from the very people it is designed to serve.

Movant, Mary Ann Smania, a degreed sociologist has unsuccessfully attempted to bring the issue of the use of cameras in the courtroom to the attention of lower court jurists as part of her belief that the American judicial system is in need of major procedural reform. She contends that the judicial branch of government has failed to embrace non-juridical disciplines such as the cultural, social and economic dynamics of a diverse American people. Each time Movant has attempted to raise these issues, local rules prohibiting the use of cameras in the courtroom have stymied Movant in her attempt to compel the judiciary to confront these issues and to bring them to the public's attention.

The Supreme Court is the only arm of the Judicial Branch that has the power to take the bold step in bringing cameras into the courtroom, and thus bringing the courts closer to the people. In the modern age of technology, where most Americans get their news and information from television and computers it is an anachronism to prohibit camera use in the courtroom. In order to fulfill the First Amendment right of free speech, free and complete information from all government sources, including the courts, is indispensable. The marketplace of ideas is no longer in the town-square, but has moved into cyber and video space. Just as an appellate court cannot discern the demeanor or credibility of a witness at the trial court level from the transcript of the trial court proceedings, so too the American public cannot understand the full passion, viability and conviction of a party's position without being present in the courtroom. Cameras in the courtroom give the public an opportunity to observe first hand the dispensation of justice, and in the instant case, to witness history in the making.

CONCLUSION

The Movant is a sociologist with a non-pecuniary interest in this issue. The eyes of the nation are upon this Court and the voice of the nation is clear. The decision this Court will reach will decide the fate of the American people. It is with this in mind that the Court should consider the issue of permitting cameras in the courtroom to record this historical event.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Movant's Motion to File a Brief as *Amicus Curiae* or in the Alternative Motion to Intervene and Brief as *Amicus Curiae* or as Intervenor has been sent by Federal Express to Theodore Olson, attorney for George W. Bush, at Gibson, Dunn & Crutcher, 1050 Connecticut Avenue Northwest, Washington, D.C. 20036: Laurence H. Tribe and Ronald A. Klain, attorneys for Albert Gore, Jr., c/o Gore Lieberman Recount Comm., Hauser Hall 420, 430 S. Capitol Street, Washington, D.C. 20003; and David Doies, attorney for Palm Beach County Canvassing Board, at Doies & Schiller, 80 Business Park Drive, Suite 110, Armonk, New York, 10504, this 10th day of December, 2000.

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